

ACT #2021 - 364

1 HB538
2 211430-5
3 By Representative Baker
4 RFD: Constitution, Campaigns and Elections
5 First Read: 11-MAR-21



1
2 ENROLLED, An Act,

3 Relating to absentee ballots; to amend Sections
4 17-11-3, 17-11-10, and 17-11-18, Code of Alabama 1975, to
5 revise the timeframe for applying to vote by absentee ballot;
6 to revise certain procedures for the processing of absentee
7 ballots; and to update certain references to federal law.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 17-11-3, 17-11-10, and 17-11-18,
10 Code of Alabama 1975, are amended to read as follows:

11 "§17-11-3.

12 "(a) Any qualified elector of this state may apply
13 for and vote an absentee ballot by mail, by hand delivery, or
14 by commercial carrier, as determined by rule by the Secretary
15 of State, as provided in Sections 17-11-5 and 17-11-9, in any
16 primary, general, special, or municipal election, if he or she
17 makes application in writing ~~therefor not less than five days~~
18 ~~prior to the election in which he or she desires to vote and~~
19 meets one or more of the following requirements:

20 "(1) The person expects to be out of the county or
21 the state, or the municipality for municipal elections, on
22 election day.

23 "(2) The person has any physical illness or
24 infirmity which prevents his or her attendance at the polls,

1 whether he or she is within or without the county on the day
2 of the election.

3 "(3) The person expects to work a shift which has at
4 least 10 hours which coincide with the hours the polls are
5 open at his or her regular polling place.

6 "(4) The person is enrolled as a student at an
7 educational institution located outside the county of his or
8 her personal residence, attendance at which prevents his or
9 her attendance at the polls.

10 "(5) The person is a member of, or spouse or
11 dependent of a member of, the Armed Forces of the United
12 States or is similarly qualified to vote absentee pursuant to
13 the federal Uniformed and Overseas Citizens Absentee Voting
14 Act, 42 U.S.C. 1973ff.

15 "(6) The person has been appointed as an election
16 officer or named as a poll watcher at a polling place other
17 than his or her regular polling place.

18 "(7) The person is a caregiver for a family member
19 to the second degree of kinship by affinity or consanguinity
20 and the family member is confined to his or her home.

21 "(8) The person is incarcerated in prison or jail
22 and has not been convicted of a felony involving moral
23 turpitude, as provided in Section 17-3-30.1.

24 (b) Applications returned by mail must be received
25 not less than 10 seven days prior to the election.

1 Applications returned by hand must be received not less than
2 five days prior to the election.

3 "~~(b)~~ (c) An applicant for an absentee ballot who is
4 a member of the Armed Forces of the United States, including
5 the Alabama National Guard, the United States Naval Reserves,
6 the United States Air Force Reserves, and the United States
7 Army Reserve on active duty or active duty for training or an
8 applicant who is the spouse of any member of the armed forces
9 or any other applicant qualified to vote absentee pursuant to
10 the federal Uniformed and Overseas Citizens Absentee Voting
11 Act, 42 U.S.C. §1973ff, may make application for an absentee
12 ballot by filling out the federal postcard application form,
13 authorized and provided for under the provisions of The
14 Federal Voting Assistance Act of 1955, Public Law 296, Chapter
15 656, H.R. 4048, approved August 9, 1955, 84th Congress 1st
16 ~~Session. Applications returned by mail must be received not~~
17 ~~less than 10 days prior to the election. Applications returned~~
18 ~~by hand must be received not less than five days prior to the~~
19 ~~election.~~ Session.

20 "~~(c)~~ (d) Any registered elector who requires
21 emergency treatment of a licensed physician within five days
22 of an election may apply for an emergency absentee ballot for
23 the election and may vote by returning the absentee ballot no
24 later than noon on the day the election is held. The attendant
25 physician shall describe and certify the circumstances as

1 constituting an emergency on a special form designed by the
2 Secretary of State and provided by his or her office to local
3 absentee election managers. The special form shall be attached
4 to the application.

5 "(d) (1) Any registered elector whose name appears on
6 the poll list of qualified voters may vote by an emergency
7 absentee ballot if any of the following situations arise:

8 "a. The elector is required by his or her employer
9 under unforeseen circumstances within five days before an
10 election to be unavailable to vote at the polls on election
11 day.

12 "b. The elector is a caregiver of a person who
13 requires emergency treatment by a licensed physician within
14 five days before an election.

15 "c. A family member to the second degree of kinship
16 by affinity or consanguinity of an elector dies within five
17 days before an election.

18 "(2) Under such circumstances, the elector shall
19 apply for an emergency absentee ballot at the office of the
20 absentee election manager no later than the close of the
21 business day one day prior to the election. The applicant
22 shall complete and file an application form designed by the
23 Secretary of State for emergency absentee voters. The form
24 shall contain an affidavit which the applicant shall sign or
25 swear acknowledging that he or she was not aware of the

1 situation constituting the emergency prior to five days before
2 the election. An applicant who meets the requirements of this
3 subsection may vote by an emergency absentee ballot. After
4 voting the ballot, the voter shall hand the ballot to the
5 absentee election manager.

6 "(e) If the occurrence of a state of emergency as
7 declared in this or any other state, or by the federal
8 government, renders substantial compliance with this article
9 impossible or unreasonable for a group of qualified voters who
10 respond to the emergency, the Secretary of State, pursuant to
11 Section 41-22-5, may adopt an emergency rule to allow those
12 qualified voters to vote by absentee ballot. Notwithstanding
13 any other laws to the contrary, all expenses and costs
14 incurred by the state or any county in carrying out the
15 responsibilities and duties included in an emergency rule
16 adopted pursuant to this subsection shall be paid by the State
17 of Alabama from any funds made available for election expenses
18 under state and federal law.

19 "(f) Notwithstanding any other provision of
20 otherwise applicable law, in the event more than one absentee
21 ballot is cast in the name of the single voter, whether any
22 such multiple ballot is cast by mail or otherwise, none of the
23 affidavit envelopes containing the multiple ballots shall be
24 opened, and none of the multiple ballots shall be counted,
25 except in the event of an election contest, upon the order of

1 the election contest tribunal. Upon the conclusion of an
2 election contest or, in the event no such contest is filed,
3 upon the expiration of time for filing such a contest, the
4 multiple ballots shall be provided to the district attorney,
5 with photocopies provided to the state Attorney General, for
6 the investigation, prosecution, or other action as may be
7 appropriate under applicable law.

8 "§17-11-10.

9 "(a) Upon receipt of the absentee ballot, the
10 absentee election manager shall record its receipt ~~thereof~~ on
11 the absentee list as provided in Section 17-11-5 and shall
12 safely keep the ballot without breaking the seal of the
13 affidavit envelope.

14 "~~(b) (1) For absentee ballots received by noon on the~~
15 ~~day of the election, the~~ The absentee election manager ~~shall,~~
16 beginning at ~~noon~~ 7:00 a.m. on the day of the election, shall
17 deliver the sealed affidavit envelopes containing absentee
18 ballots to the election officials provided for in Section
19 17-11-11. The election officials shall then call the name of
20 each voter casting an absentee ballot with poll watchers
21 present as may be provided under the laws of Alabama and shall
22 examine each affidavit envelope to determine if the signature
23 of the voter has been appropriately witnessed. If the
24 witnessing of the signature and the information in the
25 affidavit establish that the voter is entitled to vote by

1 absentee ballot, then the election officials shall certify the
2 findings, open each affidavit envelope, and deposit the plain
3 envelope containing the absentee ballot into a sealed ballot
4 box.

5 "(2) No poll worker or other election official shall
6 open an affidavit envelope if the envelope indicates the
7 ballot is an unverified provisional ballot or the affidavit
8 ~~printed thereon~~ is unsigned by the voter or unmarked, and no
9 ballot envelope or ballot ~~therein~~ may be removed or counted.
10 No poll worker or other election official shall open an
11 affidavit envelope if the voter's affidavit signature or mark
12 is not witnessed by the signatures of two witnesses or a
13 notary public, or other officer, including a military
14 commissioned officer, authorized to acknowledge oaths, and no
15 ballot envelope or ballot ~~therein~~ may be removed or counted.
16 The provision for witnessing of the voter's affidavit
17 signature or mark in Section 17-11-7 goes to the integrity and
18 sanctity of the ballot and election. No court or other
19 election tribunal shall allow the counting of an absentee
20 ballot with respect to which the voter's affidavit signature
21 or mark is not witnessed by the signatures of two witnesses 18
22 years of age or older or a notary public, or other officer,
23 including a military commissioned officer, authorized to
24 acknowledge oaths, prior to being delivered or mailed to the
25 absentee election manager.

1 "(3) Upon closing of the polls, the absentee ballots
2 shall be counted and otherwise handled in all respects as if
3 the absentee voter were present and voting in person. Precinct
4 ballot counters may be used to count absentee ballots. .
5 Absentee election officials are to be appointed and trained in
6 the same manner as prescribed for regular election officials.
7 The number of absentee election officials shall be determined
8 by the number of precinct counters provided. The county
9 commission may provide more than one precinct ballot counter
10 based upon the recommendation of the absentee election
11 manager. Beginning not earlier than ~~noon~~ 7:00 a.m. on election
12 day, the absentee election officials shall perform the duties
13 prescribed in Section 17-11-11.

14 "(4) As regards municipalities with populations of
15 less than 10,000, in the case of municipal elections held at a
16 time different from a primary or general election, the return
17 mail envelopes containing the ballots shall be delivered to
18 the election official of the precinct of the respective
19 voters, unless the city or town having a population of less
20 than 10,000 inhabitants has established, by permanent
21 ordinance adopted six months prior to the municipal election,
22 ~~established~~ a procedure for the appointment of absentee
23 election officials pursuant to subsection (c) of Section
24 11-46-27.

1 "(c) (1) Absentee ballots cast in a second primary
2 election for federal, state, or county office by individuals
3 voting pursuant to the federal Uniformed and Overseas Citizens
4 Absentee Voting Act, ~~42 U.S.C. 1973ff et seq.~~ 52 U.S.C. §§
5 20301-20311, and received after noon on the day of the second
6 primary election, shall be opened and counted at the same time
7 as the verified provisional ballots. At noon seven days after
8 the second primary election, the absentee election manager
9 shall deliver the sealed affidavit envelopes containing
10 absentee ballots to the officials provided for in subsection
11 (f) of Section 17-10-2. The officials shall call the name of
12 each voter casting an absentee ballot in the presence of
13 watchers designated by any interested candidates and shall
14 examine each affidavit envelope to determine if the signature
15 of the voter has been appropriately witnessed. If the
16 witnessing of the signature and the information in the
17 affidavit establish that the voter is entitled to vote by
18 absentee ballot, then the election officials shall certify the
19 findings, open each affidavit envelope, and deposit the plain
20 envelope containing the absentee ballot into a sealed ballot
21 box.

22 "(2) No election official shall open an affidavit
23 envelope if the affidavit printed thereon is unsigned by the
24 voter or unmarked, and no ballot envelope or ballot therein
25 may be removed or counted. No election official shall open an

1 affidavit envelope if the voter's affidavit signature or mark
2 is not witnessed by the signatures of two witnesses or a
3 notary public, or other officer, including a military
4 commissioned officer, authorized to acknowledge oaths, and no
5 ballot envelope or ballot therein may be removed or counted.
6 The provision for witnessing of the voter's affidavit
7 signature or mark in Section 17-11-7 goes to the integrity and
8 sanctity of the ballot and election. No court or other
9 election tribunal shall allow the counting of an absentee
10 ballot with respect to which the voter's affidavit signature
11 or mark is not witnessed by the signatures of two witnesses 18
12 years of age or older or a notary public, or other officer,
13 including a military commissioned officer, authorized to
14 acknowledge oaths, prior to being delivered or mailed to the
15 absentee election manager.

16 "(3) The absentee ballots described in this
17 subsection shall be opened, counted, and tabulated. The
18 results of the absentee ballots counted and tabulated on
19 election day shall be amended to include the results of the
20 absentee ballots described in this subsection.

21 "(4) In all other respects, unless otherwise
22 specifically provided by law, the absentee ballots described
23 in this subsection shall be treated as other absentee ballots.

24 "§17-11-18.

1 "(a) No absentee ballot shall be opened or counted
2 if received by the absentee election manager by mail, unless
3 ~~postmarked as of the date prior to the day of the election and~~
4 received by mail no later than noon on the day of election,
5 or, if received by the absentee election manager by hand
6 delivery, unless so delivered by the voter or medical
7 emergency designee to the absentee election manager not later
8 than the close of the last business day next preceding the
9 election or, if delivered by the medical emergency designee,
10 by noon on the day of the election.

11 "(b) The above provision does not apply in the case
12 of individuals voting absentee pursuant to the federal
13 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA),
14 ~~42 U.S.C. 1973ff~~ 52 U.S.C. §§ 20301-20311, when those
15 individuals are voting in a primary, second primary, general,
16 or special election for a federal, state, or county office or
17 proposed constitutional amendment or other referenda. In the
18 case of UOCAVA voters voting absentee in a primary, second
19 primary, general, or special election for a federal, state, or
20 county office or proposed constitutional amendment or other
21 referenda, no absentee ballot shall be opened or counted, if
22 received by the absentee election manager by mail, unless
23 postmarked as of the day of the primary, second primary,
24 general, or special election and received by mail no later

1 than noon seven days after the primary, second primary,
2 general, or special election."

3 Section 2. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.

Mac McClatchey

Speaker of the House of Representatives

[Signature]

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 30-MAR-21, as amended.

Jeff Woodard
Clerk

Senate	22-APR-21	Amended and Passed
House	27-APR-21	Concurred in Senate Amendment

APPROVED

5-6-2021

TIME

1:55 pm

[Signature]
GOVERNOR

Alabama Secretary Of State

Act Num....: 2021-364
Bill Num....: H-538

Recv'd 05/06/21 03:20pmSLF

SOR
Baker

ONSORS

HOUSE ACTION

I HEREBY CERTIFY THAT THE
RESOLUTION AS REQUIRED IN
SECTION C OF ACT NO. 81-889
WAS ADOPTED AND IS ATTACHED
TO THE BILL, H.B. 538

YEAS 83 NAYS 7

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE
NOTICE & PROOF IS ATTACHED
TO THE BILL, H.B. _____
AS REQUIRED IN THE GENERAL
ACTS OF ALABAMA, 1975 ACT NO.
919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees _____

SENATE ACTION

DATE: 4-1 2021

RD 1 RFD FRED

This Bill was referred to the Standing
Committee of the Senate on FRED

and was acted upon by such Committee in
session and is by order of the Committee
returned therefrom with a favorable report
w/amend(s) _____ w/sub _____ by a vote of

yeas 10 nays 0 abstain _____
this 7 day of April 2021

Patrick Harris Chairperson

DATE: 4.7 2021

RF FAV RD 2 CAL

DATE: _____ 20____

RE-REFERRED ☐ RE-COMMITTED ☐

Committee _____

I hereby certify that the Resolution as
required in Section C of Act No. 81-889
was adopted and is attached to the Bill,
HB 538

YEAS 26 NAYS 3

PATRICK HARRIS,
Secretary